(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

SECOND APPEAL NO. 53 OF 2003

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri N. N. Sardessai, advocate for the appellant.

Shri Sudin Usgaokar, advocate for respondent nos. 1(a), (b) and (e) and 2(a), (b) and (d).

CORAM : S. A. BOBDE, J.

DATE :10th June, 2004

P.C.:

This Second Appeal is preferred against the concurrent findings of both the Courts below in that the appellant is liable to be restrained from constructing on the suit premises. The respondents filed the present suit against the appellant for an injunction restraining the appellant from constructing a structure on the suit premises and/or interfering in any manner with the said structure in the suit property.

2. There is no dispute about

the fact that the title in the suit property vested in the respondents. The appellant, however, claimed ownership by adverse possession in view of the fact that she has been in possession for a period of over 30 years. This plea of adverse possession has been turned down by both the courts below, mainly on the ground that in the year 1981 the appellant's husband had claimed to be a mundkar of the suit property.

3. The suit has been filed in the year 1985. Having regard to the fact that the appellant had claimed mundkarship as late as about four years prior to the filing of the suit, the claim for adverse possession has been dismissed.

4. The only point urged by the learned counsel for the appellant before this Court is that the courts below have committed an error of law in denying the ownership to the appellant by way of

adverse possession. According to the learned counsel, the courts below ought to have taken into account the fact that the possession of the appellant has been uninterrupted for a period of over 30 years. The learned counsel, therefore, submitted that the subsequent act of claiming mundkarship could not have resulted in the derogation of the earlier position. Having considered the submission of the appellant, I am of the view that the courts below have rightly dealt with and answered the issue of adverse possession. The Appellate Court has rightly held that the burden of proving adverse possession is upon the person who claims it. The possession so claimed must be open, hostile and exclusive, for a period of twelve years or more, prior to the institution of the suit. The Appellate Court has rightly observed that mere long possession cannot necessarily be considered to be

adverse possession having regard to the true nature of mundkarship, which is essentially permissive in nature. The courts below have rejected the appellant's plea of adverse possession. There is no error of law committed by the courts in doing so.

5. No other point is urged before me. The Second Appeal does not give rise to any substantial question of law and is, therefore, dismissed.

S. A. BOBDE, J.

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